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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ALEX MORGAN, et al.,

Plaintiffs/Claimants,

vs.

UNITED STATES SOCCER FEDERATION, INC.,

Defendant/Respondent.

Case No. 2:19-cv-01717-RGK-AGR

Assigned to: Judge R. Gary Klausner

PLAINTIFFS' OPPOSITION TO MOTION TO TRANSFER

Complaint filed: March 8, 2019

Date: July 1, 2019
Time: 9:00 a.m.
Place: Courtroom 850

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I. INTRODUCTION

USSF's motion to transfer this case to the Northern District of California should be denied as nothing more than a thinly veiled attempt at forum shopping, which USSF itself admits is an improper basis for transfer. *See* Dkt. 46-1 at 6 ("Exceptions to the first-to-file rule include … forum shopping."). USSF, in fact, moved to transfer the Northern District of California case to the Northern District of Illinois, and strenuously argued that the *Solo* action "has no logical ties" [1] to the Northern District of California and that the case therefore should be transferred.[2] USSF is tellingly silent in its motion before this Court that its ultimate goal was to move this case to a forum that neither Plaintiffs nor Solo has selected. Instead, it misleadingly argues that the first-to-file doctrine should govern transfer of this case to the Northern District of California, giving the false impression that it was seeking to have this case adjudicated in that first-to-file forum, when Chicago and the Seventh Circuit was its real objective.

But there is no legal or factual basis to apply the first-to-file doctrine in this litigation, which squarely belongs in the Central District of California and no other forum. The first-to-file doctrine only applies to give courts discretion to decline jurisdiction to facilitate judicial efficiency and comprehensive disposition of litigation where an action involving the same parties and issues has already been filed in another district to which it has logical ties and in which the first-filing party properly claims priority. No ground exists for applying the rule in this case, because, (i) a transfer to the Northern District of California would override the class's choice of forum to send the litigation to a jurisdiction that USSF concedes has "no logical ties" to the parties or litigation, (ii) such a transfer would further no first-to-file policy because the first-filing plaintiff has consented to transfer her case to this district to accomplish any needed

[1] *See Solo v. U.S. Soccer Federation*, Case. No. 3:18-CV-05215-JD (N.D. Cal.), hereinafter ("*Solo*" or the "*Solo* action") Dkt. No. 25 at 1.

[2] The Northern District of California court denied USSF's motion to transfer the *Solo* action to Illinois on June 7, 2019. *Solo*, Dkt. No. 49.

coordination (*See* Ex. A (June 5, 2019 JPML Order) at 1)[3]; (iii) the party seeking transfer (USSF), purportedly based on first-to-file principles, has actually sought to transfer the first-filed case in the Northern District of California to the Northern District of Illinois, a jurisdiction in which no related (let alone first-filed) case is pending; and (iv) the substantial weight afforded to the convenience of this forum for the parties and witnesses, the Plaintiffs' choice of forum, and judicial economy all support litigating in this district. Under these circumstances, there is no basis for disturbing the choice of forum of the plaintiff class—a forum which has extensive ties to the dispute at issue. Each of the following factors supports the denial of this transfer motion.

First, the first-to-file rule is inapplicable here because the Northern District of California has no connection to the underlying facts and parties. This point was expressly admitted by USSF in its filings before the Northern District of California and the JPML panel.[4] In fact, it was the very premise of USSF's motion to transfer the first-filed *Solo* action to Illinois, which sought transfer *out of* the Northern District of California because that district "lacks any significant connection" to her case, and "Solo's *only* tie to [the forum] … is that it is where her counsel is located." *Solo*, Dkt. No. 25 at 7 (emphasis in original).

Second, absent any connection between the first-filed case and the claims or parties at issue, there is no first-filed policy basis to overturn the forum choice of the plaintiff class, especially because this forum has numerous ties with the parties and the underlying dispute. Indeed, Solo's individual action involves neither the same parties, as she is only one member of Plaintiffs' putative class, nor the same issues, because she need only prove discrimination against her and need not adjudicate questions of class certification and class-wide injury, as the instant case will. USSF offers no authority where a court has applied the first-to-file doctrine in these circumstances.

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[3] All cited exhibits are exhibits attached to the concurrently filed declaration of Jeanifer Parsigian.

[4] *See Solo*, Dkt. No. 25 at 1; MDL 2890, Dkt No. 15 at 12–19.

Moreover, the fact that Solo has now stipulated before the MDL panel that she will consent to a transfer of the first-filed action to this district should, by itself, dispose of this transfer motion. If the first-filing party agrees that this district is appropriate to adjudicate the claims, there is no conceivable basis for applying the first-to-file doctrine to deny the plaintiff class its chosen forum. USSF was not the first-to-file plaintiff and it cannot argue for a priority of filing when it never filed any case at all.

Third, equitable concerns preclude USSF's disingenuous application of the first-to-file rule, which is a discretionary doctrine. As noted above, USSF is only seeking to transfer this action to the Northern District of California as part of its attempt to get both cases transferred to the Northern District of Illinois. This litigation gamesmanship negates any attempt by USSF to invoke first-to-file principles, as its real objective was to engage in improper forum shopping by seeking to move both actions outside of the Ninth Circuit to the Northern District of Illinois, which has no related case pending (first-to-file or otherwise). USSF has thus filed this motion not in a good faith effort to achieve the objectives of the first-to-file rule, but to further its inequitable attempt at forum shopping.

Finally, the substantial weight afforded to the convenience of the parties and witnesses supports litigating in this district and Plaintiffs' choice of forum. Likewise, the *Solo* action's minimal procedural progress to date strongly weighs against transfer. There is no forum that has a stronger connection to this dispute than the Central District of California, where the USSF maintains its National Training Center that the Women's National Team considers to be the closest thing to its home, where the Women's National Team has long played some of its games, where numerous witnesses are located, and where two of the named plaintiffs maintain their residences.

II. SUMMARY OF RELEVANT PROCEDURAL FACTS

A. Solo, the first-to-file plaintiff, stipulated to transfer to this district at the JPML hearing.

Recognizing that coordination or consolidation with the *Solo* action would "promote the just and efficient conduct" of this litigation, upon filing the Complaint, Plaintiffs moved the Judicial Panel on Multidistrict Litigation ("JPML") to consolidate the cases for pretrial proceedings in the Central District of California. Dkt. No. 9-1. Solo and USSF filed separate oppositions.[5] However, at the May 30, 2019 hearing before the JPML, Solo's counsel indicated that she now consents to transferring her case here:

> **MR. NICHOLS:** …We are totally open to coordinating. …
>
> **JUDGE PROCTOR:** Are you open to a 1404 transfer to the Central District of California?
>
> **MR. NICHOLS:** Sure. Absolutely.
>
> **JUDGE PROCTOR:** Well, why don't you just consent to that and make our job so much easier in this case?
>
> **JUDGE HUVELLE:** And yours, too.
>
> **MR. NICHOLS:** That would be fine with us.
>
> **JUDGE VANCE:** All right. I think that's all we need to hear.
>
> **JUDGE PROCTOR:** So let it be written. So let it be done.

See Ex. B (JPML Hearing Transcript) at 9:12–24. Citing Solo's "representat[ion] that she would stipulate to transfer under 28 U.S.C. §1404 to the Central District of California," the JPML concluded §1407 centralization was "not necessary" and denied Plaintiffs' motion. *See* Ex. A (June 5, 2019 JPML Order) at 1.

B. USSF is not actually seeking to have this action heard in the first-filed district; it has been seeking transfer to the Northern District of Illinois.

Plaintiff in the *Solo* action is a single former U.S. Senior Women's National Soccer Team ("WNT") player pursuing claims under Title VII and the Equal Pay Act

[5] MDL 2890, Dkt Nos. 14 (Solo Opposition) and 15 (USSF Opposition).

on an individual basis. At USSF's request, the *Solo* action was stayed on April 4, 2019 pending resolution of the JPML petition. *Solo*, Dkt. Nos. 46, 47. Prior to that, USSF filed a motion seeking to transfer the *Solo* action *out of* the Northern District of California to the Northern District of Illinois.[6] That motion argued that "[t]he Northern District of California has no logical ties to the parties, the activities alleged in the Complaint, the sources of proof, or the likely witnesses in this case." *Solo*, Dkt. No. 25 at 1. USSF also stated that it "lacks any significant connection" to the Northern District of California," and that "Solo's *only* tie to [the district] … is that it is where her counsel is located." *Id*. at 7 (emphasis in original). USSF has made similar assertions before the JPML, where it sought to have any consolidation take place in the Northern District of Illinois, where no related case is pending—let alone a first-filed case. MDL 2890, Dkt No. 15 at 12–19.

USSF has also filed a motion to dismiss Solo's complaint under Rule 12(b)(6),[7] but, at the hearing in January for both motions, the court only took argument on the transfer motion and stayed the motion to dismiss.

There is no schedule and no current deadlines in the *Solo* case. Discovery has not opened. After the JPML issued a decision on June 5, 2019, the *Solo* court denied USSF's motion to transfer to Illinois and directed the parties to submit a proposed schedule. This Court, however, already has set a scheduling conference to take place on August 19, 2019, by which date the parties may already have begun the discovery process. Moreover, while a motion to dismiss has been filed by USSF against the *Solo* action, here, the USSF has simply filed an answer, enabling the case to move forward quickly.

III. LEGAL STANDARD

When deciding whether to apply the first-to-file doctrine to decline jurisdiction, a court first considers whether the proponent has established three threshold

[6] *See Solo*, Dkt. Nos. 25, 35, 37, 44.
[7] *See Solo*, Dkt. Nos. 29, 33, 38.

requirements: "(1) the chronology of the two actions; (2) the similarity of the parties, and (3) the similarity of the issues." *Guthy-Renker Fitness, L.L.C. v. Icon Health & Fitness, Inc.*, 179 F.R.D. 264, 270 (C.D. Cal. 1998) (citing *Alltrade, Inc. v. Uniweld Prod., Inc.*, 946 F.2d 622, 625 (9th Cir. 1991)). If the threshold requirements exist, the court has discretion to choose to transfer an action to the forum hearing the first-filed case based on principles of judicial administration.

But, the "most basic aspect" of the doctrine is that it is discretionary. *Alltrade*, 946 F.2d at 628. Even if a case meets the threshold elements, the first-to-file rule need not "be mechanically applied." *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94–95 (9th Cir. 1982). Rather, courts must consider the option of first-to-file transfer "with a view to the dictates of sound judicial administration," *id.* at 95, "giving regard to conservation of judicial resources and comprehensive disposition of litigation," *Alltrade*, 946 F.2d at 627–28. *See also Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) ("[T]he general principle [of the first-to-file rule] is to avoid duplicative litigation.").

As a result, the first-to-file doctrine is often not applied where judicial administration or equitable concerns lead to a conclusion that another forum is more appropriate. *See e.g. Wells Fargo Bank, N.A. Tr. for Natividad Caballero 2007 Ins. Tr. v. Principal Life Ins. Co.*, No. 09-CV-00068-DDP-RZx, 2009 WL 10671947, at *4 (C.D. Cal. Apr. 22, 2009) (considering convenience factors in declining to apply the first-to-file doctrine); *Alaris Med. Sys. Inc. v. Filtertek Inc.*, No. 00-CV-2404-L-AJB, 2001 WL 34053241, at *3–4 (S.D. Cal. Dec. 20, 2001) (same); *Z-Line Designs, Inc. v. Bell'O Int'l, LLC*, 218 F.R.D. 663, 667 (N.D. Cal. 2003) (refusing to apply first-to-file rule due to equitable concerns); *Xoxide, Inc. v. Ford Motor Co.*, 448 F. Supp. 2d 1188, 1193–94 (C.D. Cal. 2006) (same); *S&N Enterprises, Inc. of Virginia v. WowWee USA, Inc.*, No. 18-CV-2255-GPC-AGS, 2018 WL 6266569, at *7 (S.D. Cal. Nov. 30, 2018) ("In sum, the balance of convenience factors weigh in favor of litigating the case in the [second-filed forum] and against applying the first-to-file rule.").

IV. ARGUMENT

A. The first-to-file doctrine is inapplicable here because, as USSF plainly admits, the first-to-file transferee forum has no connection to this case.

Courts have eschewed the first-to-file doctrine where, as here, the forum of the first-filed case lacks any significant connection to the parties or the litigation. *See*, *e.g.*, *Nuance Commc'ns, Inc. v. Abbyy Software House*, No. 08-CV-01097-AHM-FFMx, 2008 WL 11338129, at *3 (C.D. Cal. June 3, 2008) (declining to apply doctrine where first-filed action had "minimal connections" to the forum); *Wells Fargo*, 2009 WL 10671947, at *4 (dispensing with first-to-file rule in part because of the disconnect between the first-filed forum and the majority of factual events underlying the case and the lack of witnesses in first-filed forum).

Here, the parties *agree* that the Northern District of California is not a proper forum because it has minimal connections to the case. USSF cannot dispute—because it affirmatively argued in the *Solo* action and before the JPML—that "[t]he Northern District of California has no logical ties to the parties, the activities alleged …, the sources of proof, or the likely witnesses …."[8] *See Solo*, Dkt. No. 25 at 1.; MDL 2890, Dkt No. 15 at 12–19. Its disingenuous invocation of the first-to-file doctrine in this motion in favor of the Northern District of California is pure litigation gamesmanship, as its true objective was to transfer this action, with the *Solo* action, to the Northern District of Illinois, where no related case, let alone a first-filed case, is pending. This is not a proper object for invoking the first-to-file doctrine and this Court, with its ample discretion and charge of sound judicial administration and the avoidance of improper forum shopping, should not apply the doctrine to deny the class Plaintiffs here of their

[8] Tellingly, USSF's motion does not even try to argue that the convenience of the parties or witnesses favors a transfer. As discussed below, *infra* Part IV.D, there are far more material connections to this district, including the locations of the U.S. Soccer National Training Center, many key witnesses, and the residence of the first-named plaintiff, Alex Morgan, than to the Northern District of California. *See also* Ex. C (*Morgan* Plaintiffs' Reply ISO §1407 Transfer and accompanying Declaration of Alex Morgan).

chosen forum of the Central District which, as discussed below, *infra* Part IV.D, has substantial ties to this action.

B. The first-to-file doctrine cannot be invoked by USSF when the first-to-file party, Hope Solo, has now agreed that her action should be transferred to this district.

An additional, dispositive reason why the first-to-file doctrine cannot be applied is that Hope Solo's counsel has now agreed to stipulate to transfer her action to the Central District of California. Ex. B (JPML Hearing Transcript) at 9:12–24. Indeed, it was based on this representation that the JPML concluded that it was not necessary to otherwise consolidate the two actions. Ex. A (JPML Order) at 1.

USSF is not the first-filing party. It has not filed any action at all. There is thus no basis to apply a doctrine of filing priority to override the forum choice of the class Plaintiffs in favor of a forum that USSF did not select and that the first-to-file plaintiff, Ms. Solo, now agrees should give way to this district. To Plaintiffs' knowledge, no court has ever applied the first-to-file doctrine in these circumstances where the first-to-file plaintiff agrees that the transferor forum should be preferred.

C. Another reason the first-to-file doctrine should not be applied is that the parties and claims in the *Solo* action are not the same.

In addition to the other defects in its motion, USSF cannot establish the second and third threshold elements of the first-to-file doctrine because Solo's individual claims do not encompass the same parties or the same issues as this putative class action. *Dubee v. P.F. Chang's China Bistro, Inc.*, No. 10-CV-01937-WHA, 2010 WL 3323808, at *2 (N.D. Cal. Aug. 23, 2010) (holding plaintiffs and issues were not substantially similar where first-filed action was brought by an individual employee and second-filed action was brought by a putative class). In this situation, it is the forum choice of the class Plaintiffs, who represent all current and former team members within the class, as opposed to the initial (now abandoned) choice of a single player that should be honored by the Court.

Indeed, Plaintiffs in this case are not parties to the *Solo* action, which was filed by only one putative class member who has already indicated she does not intend to participate in the class. As *Dubee* held: "the claims asserted by the [individual] plaintiff in [the first-filed action] do not (and will not) encompass plaintiff and the putative class in the instant [later-filed] action." *Id.*; *see also Ross v. U.S. Bank Nat'l Ass'n*, 542 F. Supp. 2d 1014, 1020 (N.D. Cal. 2008) (denying first-to-file motion because "the [first-filed] plaintiffs are currently limited to the named individuals in that case, and none of them is in the present action"). *Dubee*, which involved a first-filed single plaintiff employee lawsuit and a second-filed putative class action against the same defendant, is directly on point in refusing to apply the first-to-file doctrine to override the forum choice of the class Plaintiffs.

In contrast, none of USSF's inapposite cases involved the potential transfer of an entire putative class *to* a district previously chosen by a lone individual plaintiff. *See* Mot. at 5 (citing *Schwartz v. Frito-Lay North America.*, No. 12-CV-02740-EDL, 2012 WL 8147135, at *3 (N.D. Cal. Sept. 12, 2012) (putative nationwide classes in both actions); *Calderon v. Cargill, Inc.* No. 13-CV-7046-GHK-JEMx, 2013 WL 12205633, at *2 (C.D. Cal. Dec. 10, 2013) (same); *Prime Healthcare Services, Inc. v. Harris*, No. 15-CV-1934-GHK-DTBx, 2016 WL 6693152, at *2, *4 (C.D. Cal. Mar. 31, 2016) (no class issues, and parties in the actions were the same or "closely related entities")). Indeed, one of USSF's authorities, *EFG Bank*, addressed the inverse of the circumstances here and in *Dubee*: the transfer of a small group of plaintiffs in a later-filed action *to* a first-filed district with consolidated class actions, and specifically noted that the consolidated classes included the few transferee plaintiffs. *EFG Bank AG, Cayman Branch v. Lincoln Nat'l Life Ins. Co.*, No. CV 17-817-JFW-KSx, 2017 WL 5635022, at *1, *4 (C.D. Cal. June 8, 2017). Unlike *EFG Bank*, "Plaintiffs in this case cannot opt-in" to the first-filed individual action, making the parties insufficiently similar to warrant first-to-file transfer. *Ross*, 542 F. Supp. 2d at 1020.

Further, while the cases make similar allegations and claims of gender discrimination by USSF, the *Solo* action will turn solely on factual issues relating to a single player as opposed to this action, which will have to determine whether there was gender based discrimination "effect[ing] an entire class of similarly situated employees." *Dubee*, 2010 WL 3323808, at *2. Nor will Solo have to litigate the issues surrounding class and collective action treatment. *Id.* These important differences "defeat[] any argument that the instant action is substantially similar to the earlier-filed action." *Id.*; *see also Ross*, 542 F. Supp. 2d at 1020 (explaining that because only the second-filed action involved a class "a judgment or relief rendered in [the first-filed action] will not resolve the issues in this case"). For these reasons as well, the first-to-file doctrine should not be applied.

D. The convenience of the parties and witnesses as well as equitable concerns strongly favors not applying the first-to-file doctrine in this case.

Finally, this is a case where the "[c]ircumstances and modern judicial reality" demand departing from the first-to-file doctrine in the interests of equity because the balance of convenience and judicial economy strongly favor this district. *Xoxide*, 448 F. Supp. 2d at 1192 (citations omitted).

USSF has not disputed—nor can it—that this forum is significantly more convenient to both the parties and witnesses than the Northern District of California. As described in detail in Plaintiffs' JPML reply brief, this is where the WNT is at home, where it most regularly trains at the U.S. Soccer National Training Center, where it plays part of its schedule, and where two key plaintiff-player witnesses live: Alex Morgan, one of the lead class representatives, and Christen Press, a WNT player who had significant involvement in the collective bargaining agreement negotiations that set the WNT's discriminatory pay. *See generally* Ex. C. But the same cannot be said for the Northern District of California—a forum that, in USSF's words, "lacks any significant connection to the alleged events underlying th[e] lawsuit." *Solo*, Dkt. No. 25 at 7. USSF also agrees that neither it nor Solo have any material connection to that

district. *See id.* at 1. Thus, judicial administration and convenience concerns strongly favor the forum chosen by the class Plaintiffs. This conclusion is further underscored by the agreement of Solo that her case should now be transferred to this district. *See Alaris*, 2001 WL 34053241, at *3–4 (dispensing with first-to-file rule where the second forum was strongly favored by principles of convenience).

In these circumstances, Plaintiffs' choice of forum is a central consideration that should "rarely be disturbed," *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947), especially when the forum has "meaningful ties to the controversy," as is the case here. *See Peace v. Parascript Mgmt., Inc.*, 12-CV-09663-JGB-Ex, 2013 WL 12137565, at *3 (C.D. Cal. Mar. 18, 2013). Moreover, even if she had not agreed to transfer to this district, Solo's choice of forum as a single plaintiff who intends to opt out of any class action is entitled to much less weight than the forum choice of the entire current roster of the WNT, including the only four representative plaintiffs who exhausted their administrative remedies and waited to obtain a right to sue letter from the EEOC before filing a class action to assert these claims. USSF has advanced no argument capable of making the "strong showing" needed to deviate from Plaintiffs' chosen forum in these circumstances where the Central District of California has much stronger ties to this action. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).[9]

[9] It also should be noted that the lack of any material advancement of the *Solo* action in the Northern District of California to date (where a pending motion to dismiss will still need to be decided) is another factor arguing against transfer to that district. *See e.g. Alaris*, 2001 WL 34053241, at *3–4 (dispensing with first-to-file rule in part because second action "has progressed sufficiently to begin with the exchange of written discovery," thus furthering judicial economy); *Brice v. Plain Green, LLC*, No. 18-CV-01200-WHO, 2019 WL 1500361, at *13–14 (refusing to apply first-to-file rule because first-filed action had been stayed without a definite timeframe for resuming). By contrast, this Court has already undertaken steps to move this case forward, and the USSF has foregone any motion to dismiss by filing an Answer. Dkt. No. 42.

V. CONCLUSION

For all of the reasons set forth above, USSF's motion to transfer under the first-to-file doctrine should be denied. There is no basis for disturbing the forum choice of the class Plaintiffs in this action.

Dated: June 10, 2019

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed with the Court's CM/ECF system, which will provide notice to all counsel deemed to have consented to electronic service.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Dated: June 10, 2019

WINSTON & STRAWN LLP

By: /s/ *Jeffrey L. Kessler*
Jeffrey L. Kessler